

**OCT 18 2005**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FAUSTINO ZAVALA-SANTILLANEZ,

Defendant - Appellant.

No. 04-50034

D.C. No. CR-03-00642-TJW

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Thomas J. Whelan, District Judge, Presiding

Submitted October 11, 2005<sup>\*\*</sup>

Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.

Faustino Zavala-Santillanez appeals his 84-month sentence imposed following a conviction for illegal re-entry into the United States without the consent of the Attorney General, in violation of 8 U.S.C. § 1326. We have

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 1291.

Appellant contends that the district court plainly erred when it failed to advise him of certain trial rights, as required by Rule 11 of the Federal Rules of Criminal Procedure. Upon review, we conclude there is no plain error as appellant has failed to demonstrate that these omissions affected his substantial rights, *see United States v. Jimenez-Dominguez*, 296 F.3d 863, 867-69 (9th Cir. 2002), or seriously affected the fairness or integrity of his guilty plea, *see id.* at 870.

Appellant also contends, and the appellee concedes, that the district court plainly erred when it failed to apply an additional point reduction for acceptance of responsibility. Because this contention has merit, we vacate the sentence and remand for re-sentencing. *See United States v. Ochoa-Gaytan*, 265 F.3d 837, 844-45 (9th Cir. 2001).<sup>1</sup>

The district court is also instructed to consider *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc), in appellant's re-sentencing.

**VACATED and REMANDED.**

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<sup>1</sup> All outstanding motions are denied.